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(2)

No. 06-601

In The
SUPREME COURT OF THE UNITED STATES

In re Osama "Sam" Odeh, Petitioner
v.
United States, Respondent

On Petition for Rehearing
In Cause 06-601

By: Sam Odeh
1803 Primrose
Arlington, Texas
76014
817-465-0278

12/26/2006

Questions Presented

Question 1.

Since the cold record in Petitioner's case shows he was never accused of any "positive act of concealment" justifying his guilty-plea conviction, shouldn't the Court grant certiorari?

Question 2.

Has possible clerical manipulation involving personnel of the Supreme Court's Clerk's office prevented this Court from making a fully-informed ruling in the case?

List of Parties

Respondent: The United States of America

Petitioner: Osama ASam@ Odeh

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Jurisdiction

Supreme Court Rule 44 authorizes the filing of petitions for rehearing of any judgment or decision of the Court on the merits. Movant herein seeks reconsideration of this Court's denial in Cause 06-601 of Movant's Petition seeking relief from the Fifth Circuit's dismissal of his Coram Nobis Motion in Circuit cause 05-10764. This Court denied Movant's Petition in 06-601 on 1 December 2006. Judgment was entered on 4 December 2006.
The jurisdiction of the Court regarding Movant's underlying petition in 06-601 rested upon 28 U.S.C. §1254.

Two Grounds for this Petition seeking Rehearing

I. Movant's actual innocence not previously fully presented

The indisputable record shows Movant was innocent of his guilty plea misprision conviction. Neither the charging instrument (a superceding Information) nor his Pre-Sentence Investigation Report contain even a hint he committed any "positive act of concealment" as required for a misprision conviction. Incredibly, the record facts proving his actual innocence were *not mentioned or reviewed by either the District Court nor the Circuit* in denying his Motion seeking Coram Nobis relief on procedural grounds.

Moreover, since his underlying petition to this Court in Supreme Court cause 06-601 focused on whether or not

> "a finding by a U.S. Judge that his court was a 'victim of fraudulent conduct' by attorneys during the course of a 1998 criminal prosecution could furnish sufficient support to bring a 'fraud upon the court' action pursuant to Rule 60b",

Movant's claim regarding his innocence was only tangentially mentioned on page 2 of his previous filing, but

was not fully presented to this Court for determination. His claim of his actual innocence can thus be construed as "grounds not previously presented", justifying this petition for rehearing per Rule 44 of this Court.

II. Possible clerical manipulations of 06-601

Apparent clerical manipulations by a case analyst of this Court may have possibly prevented the Justices from even considering his petition in 06-601. The evidence of said manipulation is five-fold, and can be seen to constitute "intervening circumstances of a substantial effect", thus separately justifying this petition for rehearing per Rule 44.

Statement

1. Movant's actual innocence

In 1998, Your Movant was an immigrant with extremely limited English reading or writing skills, completely at the mercy of his retained attorney, Mr. Timothy Evans. Movant unwittingly pled guilty to a misprision charge on advice of said attorney, who committed certain acts which ensured Movant's baseless guilty plea was nevertheless accepted.

During an appeal Movant made to the Fifth Circuit concerning the District's dismissal of his Coram Nobis Motion, he presented the extraordinary finding made by the Honorable U.S. Judge McBryde on 8 May 2006 (in a *Bivins* action brought by Movant and his father as Northern Texas cause 4:06-CV-225) that said Judge had been "a victim of fraudulent conduct on the part of Evans and Heiskell" during the course of Movant's criminal prosecution in 1998. [See Appendix, Pg. I, for Judge McBryde's holding in its excellent entirety.]

Unfortunately for justice and Movant, the Fifth Circuit ignored U.S. Judge McBryde's 8 May 2006 finding, dismissing Movant's Coram Nobis Motion on 15 June 2006, while claiming Movant's allegations of fraud perpetrated by attorneys in 1998 were "unsupported".

Your Movant then timely petitioned for certiorari to this Court, which recently appears to have denied his petition on 1 Dec. 2006 in cause 06-601. In his petition to this Court, Movant discussed at length Judge McBryde's holding that he was a likely victim of attorney fraud, but failed to fully present the issue that the cold record proves his innocence. Movant's claim is indisputably proven by the charging instrument and the Pre-Sentence Investigation Report, both of which are appended hereto. They prove beyond any doubt that Your Movant is innocent, since he was never accused of having committed any act of concealment preventing the earlier discovery of his family's "crime" of resetting odometers (solely on vehicles exported to nations which do not criminalize or prosecute such act!).

2. Possible Clerical manipulation of 06-601

Petitioner watched as his criminal case, then his Coram Nobis Motion were manipulated by clerks, attorneys and others at each level of the U.S. Court system in order to change the outcome of the case. Although this is not the time or setting to set forth evidence to support that claim, Movant has discovered at least five separate anomalies occurring during the course of his recently denied petition in 06-601 which give rise to the reasonable belief that personnel in the office of the Honorable William Suter may have actually prevented Movant's petition from even being considered by this Court.

Reasons for granting the Petition to Rehear

1. Movant's actual innocence

In 1998, Petitioner unwittingly pled guilty upon advice of his retained counsel Timothy "Tim" Evans to alleged misprision of his brothers' "crime" of resetting odometers solely on vehicles they exported to Middle-eastern nations which do not even criminalize, let alone prosecute, such act. The federal crime of misprision requires allegations and proof of four elements:

a. A federal crime was committed,
b. An accused had knowledge of the crime,
c. The accused did not bring the crime to the attention of authorities, and
d. The accused committed at least a single "positive act of concealment" to prevent the earlier discovery of the underlying crime.

[Cite omitted]

Since it is not a crime in Middle-eastern nations to reset odometers, and since the U.S. does not require any statement of value on exports, (the U.S. constitution forbids imposition of taxes on exports), Petitioner's family never needed to declare the value of their exports, thus there was no need to conceal their actions of resetting odometers on their exports. They never concealed anything from any government agent at any time, either here or abroad. Thus, Movant never committed the crime of misprision for which he continues to suffer ongoing debility.

But since he was virtually English-illiterate at the time of his conviction, relying entirely upon the advice of his retained counsel Evans he pled guilty to ensure he could stay "on the outside" in order protect the families of his brothers while they served time for their alleged "crime".

In its original indictment, the Government could not offer and failed to allege that Petitioner committed any "positive act of concealment" which would have justified his guilty-plea. In its superceding Information, the Government could not offer and failed to allege Petitioner committed any "positive act of concealment" which would have justified his guilty-plea conviction. [See attached copy, Appendix pg. VIII]

The Probation officer who prepared Movant's "PreSentence Investigation Report" could not allege and did not allege that even a single act of concealment had been committed by Your Petitioner. [See attached copy, Appendix Pg. IX]

Several English-literate American lawyers, (the involved AUSA Mr. Michael Worley, his supervising AUSA Mr. Richard Roper, The Honorable U.S. Judge Robert Maloney) and a probation officer failed to prevent Movant's attorney from proffering a guilty plea on behalf of his unwitting client despite the fact there was absolutely no allegation the client concealed in any fashion the resetting by his family members of odometers on exported vehicles.

Movant's actual innocence, when viewed in *pari material* with the finding by Judge McBryde of attorney fraud during Movant's criminal prosecution, offer indisputable support to his drive to secure relief from his baseless misprision conviction.

2. Possible Clerical manipulation of 06-601

Your Movant has suffered repeated manipulations of his case at each level of the U.S. court system, in order to change its outcome both during his criminal prosecution in 1998 as well as throughout the course of his Coram Nobis Motion, which was filed in 2004.

However, Movant has recently become very concerned that his petition for writ of Certiorari in Supreme Court cause 06-601 may have also been manipulated by clerical staff in order to change its outcome, despite his innocence.

His concerns stem from the following five separate incidents or anomalies:

1. Impossible coincidence

In June 2005 Movant filed his appeal in the Fifth Circuit concerning the dismissal by the District of his Coram Nobis Motion The appeal was assigned case number 05-10764, and therein Movant once again reiterated his explicit, non-conclusory allegations of attorney fraud in regard to Movant's baseless 1998 criminal conviction for misprision. Even though the Circuit reported no backlogs, for over one year it failed to rule on a single motion in appeal 05-10764.

On 14 June 2006 Movant appeared at the United State Supreme Court, seeking to file in person a petition seeking a Writ of Procedendo to compel the Circuit to move to judgment in 05-10764, after a year of inaction. On that date, Mr. Jeff Atkins, case analyst for the Supreme Court, rejected Movant's petition, informing Movant that he had "never heard of the extraordinary Writ of Procedendo" and that Movant would have to re-label, then resubmit his document as a petition instead seeking mandamus relief.
In an impossible coincidence, the very next day, 15 June 2006, after the Circuit had failed to rule on so much as a single substantive motion during the entire year Movant's Coram Nobis appeal had lain before it, the Circuit issued its terse dismissal of the appeal, claiming Movant's allegations of attorney misconduct were supposedly "unsupported".

Movant has a reasonable belief that Mr. Atkins informed Circuit personnel of Movant's attempt to seek a Writ of

Procedendo in the Supreme Court, which possibly precipitated the Circuit's rushed dismissal of 05-10764. On its own, such an impossible coincidence would be meaningless; in the context of the following anomalies, that "coincidence" takes on significance.

2. Failure to properly endorse check

According to Movant's bank, the check he proffered in 06-601 (#1254 dated 27 October 2006 for $300.)
a. was never endorsed by anyone on behalf of the Supreme Court,
b. it involves a non-U.S bank apparently located offshore, and
c. all the funds are being returned to Movant's account after investigation by his bank, because of the impropriety of the transaction.

Movant contends that his bank's suspicion as to the unendorsed cashing of his check in a non-U.S. bank could be construed as supporting his intuition that his case 06-601 was never even heard by a Supreme Court justice, let alone denied by a Supreme Court justice.

3. Possible fabricated letter in 06-601

It appears that someone fabricated a letter supposedly waiving the right of the United States to reply to Movant's petition in 06-601, then entered the letter into the case file.

As proof for this claim, it must be noted as background that when Petitioner filed his amended copy of his petition seeking cert in 06-601, the printer inadvertently caused a certain artifact to reoccur every time a quotation mark was supposed to appear in the text. For example, on the cover page of the document, instead of reading correctly that

Petitioner was Osama "Sam" Odeh, it literally read as follows:

Osama ASam@ Odeh

Due to the time deadline, the printer could not reprint the document, which was accepted anyway by Supreme Court case analyst Mr. Atkins, complete with the printer's inadvertent artifacts.

Petitioner failed thru inadvertence to send a copy to the Solicitor General of that final version containing the printer's artifacts of his petition for cert. Nevertheless, an unsigned document was entered into the record of the case, supposedly filed by Mr. Paul D. Clement, Solicitor General, which bears the date 9 November 2006 and purports to be the standard "waiver" of the Government's right to file a response to the petition in 06-601. At its foot, the purported author if the unsigned document, Solicitor General Clement, purports to send a carbon copy to

OSAMA ASAM@ ODEH

despite the fact the Solicitor General never received a version of the document with the printer's artifacts in place of the quotation marks.

The only persons in Washington who possessed the version of Movant's documents with the printer's artifact was Supreme Court case analyst Mr. Jeff Atkins, and his associates. From Movant's perspective, it is reasonable to conclude that someone possibly fabricated the "waiver" on behalf of Mr. Clement, then entered it into the record to give the appearance of regularity to the case file. It is also easily conceivable that Mr. Clement has never even heard of 06-601.

4. Incidents relative to Movant's subsequent petition.

Movant has repeatedly attempted to file another petition in this court concerning the imposition by the Circuit of sanctions against Movant on 8 August 2006. [In the document wherein the Circuit imposed the sanctions, it failed to identify even a single act, document or statement by Movant which would justify the draconian sanction imposed.]

Movant's petition for Writ of Certiorari regarding the Circuit's sanctions was physically received by case analyst Mr. Jeff Atkins in proper form on 27 Nov. 2006, but he has refused to the date of this filing to act in any manner whatsoever on said petition. He has neither returned the document to correct clerical deficiencies, nor docketed the document.

5. Fabricated Letter from the Office of Clerk Suter

Someone in The Honorable Clerk William Suter's office apparently fabricated a letter and affixed a rubber-stamped version of the Clerk's signature thereto, in which letter the Clerk is made to state: "I have concluded that no errors were committed by any member of this office in reviewing and returning the petition to you." [Mr. Suter's emanuensis is referring to Mr. Atkins' rejection on 15 September 2006 of Movant's attempt to seek certiorari review of the Circuit's imposition of sanctions against him.]

Said letter bears the exact same faulty logic and language used by Mr. Atkins himself, but fails to refer to any of the numerous documents sent by Movant to Mr. Atkins and Mr. Suter, which demonstrate Mr. Atkins was clearly in error when he rejected the document in question.

Worse, when Movant recently visited the Supreme Court to enquire about his cases in late November, Mr. Atkins verbally authorized Movant to refile his petition concerning the Circuit sanctions! Yet the letter "by" Clerk Suter does not even mention Mr. Atkins' latest *volte face*.
Since Mr. Atkins has clearly reversed himself from his previous decision preventing Movant from filing a petition seeking review of the sanctions imposed by the Circuit, Movant contends that the rubber-stamped letter with the Clerk's signature affixed, was possibly written by someone other than Clerk Suter.

Summary of Issue II.

In light of the anomalies concerning
1.) the events surrounding Mr. Atkins' rejection on 14 June 2006 of Movant's petition seeking a Writ of Procedendo to the Circuit,
2.) Movant's check,
3.) the apparent fabrication of a letter on behalf of the Solicitor General as found in the record of 06-601,
4.) the actions by Mr. Atkins' first rejecting then approving, then refusing to docket Movant's petition concerning the Circuit's sanctions, and
5.) the possible fabrication of a letter on behalf of the Honorable Clerk of this Court,
it is certainly conceivable that Movant's petition in 06-601 was not even heard at all by any Supreme Court Judge, since it concerns potentially embarrassing allegations of extensive manipulations occurring in the courts below in order to change the outcome of cases.

Relief Requested

In the underlying petition of which Movant is herein seeking rehearing, he raised the issue of whether or not the finding by U.S. Judge McBryde of attorney fraud having

been committed upon his court in 1998 is sufficient basis upon which Movant brought his Coram Nobis action, pursuant to Rule 60b.
Movant raised a second issue tangentially therein, his actual innocence, but failed to provide full documentation to support that claim.

Because
1.) Petitioner/Movant is clearly, indisputably innocent, and his guilty-plea conviction is baseless, as proven by the cold record; and because
2.) the aforementioned anomalies tend to show his petitions filed in this Court have been and are currently being manipulated in order to change their outcomes,
Movant requests the Court reconsider its recent denial of his petition seeking certiorari to the Fifth Circuit.

Simply stated, justice has been denied in this case far too long.

Respectfully submitted

Osama "Sam" Odeh
1803 Primrose
Arlington, Texas 76014
817-465-0278

Certificate of intervening circumstances, substantial ground not previously presented, and good faith

Pursuant to Rule 44 of this Court:

Movant certifies that the primary ground under which he seeks rehearing, i.e., that the record shows that he is innocent, was not previously presented in clear enough fashion in his underlying Petition seeking Certiorari regarding the Fifth Circuit's dismissal of his Coram Nobis Motion.

Movant also certifies that intervening circumstances, e.g., of apparent clerical manipulation occurring at this Court, e.g., fabrication of a documents, the failure to endorse Movant's proferred check, etc., all give rise to the reasonable suspicion that his Petition in 06-601 was never considered on its merits.

Finally, Movant certifies that this Petition is presented in good faith and not for delay.

Certified this ___ day of December 2006.

_____

Sam Odeh

Index of Appendices

A. 8 May 2006 Order by The Honorable U.S. Judge John McBryde, Northern District of Texas, in *Bivins* action 4:06-CV-225 pending in the Northern District of Texas finding likely fraud committed by attorneys..... ..... Page VII.

B. 1998 "Superceding Information" against Petitioner. Page VIII. Northern District of Texas Case No. 4:97-CR-105(6)

C. 1998 PreSentence Investigation Report..... Page IX. Northern District of Texas Case No. 4:97-Cr-105(6)

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A. 8 May 2006 Order of recusal by The Honorable U.S. Judge John McBryde, Northern District of Texas, entered in *Bivins* action 4:06-CV-225, "Ali Odeh and Sam Odeh, vs. Richard Roper, et al.",wherein Judge McBryde holds that fraud was likely committed upon his court during the 1998 criminal case against Petitioner.

"Order"

This is an action brought pursuant to *Bivens* and 42 U.S.C. § 1983 by Ali Odeh ("Ali") and Osama "Sam" Odeh ("Sam"), collectively plaintiffs, against, among others, Timothy Evans ("Evans"), an attorney who, plaintiffs allege, once represented Sam in the criminal case described in plaintiffs' complaint, and Michael P. Heiskell ("Heiskell"), another attorney who, plaintiffs allege, was shown of record as an attorney for Sam in the same criminal action.

The complaint filed April 28, 2006, as amended ("amended complaint") alleges a complex set of facts that

plaintiffs maintain support their contention that Evans and Heiskell collaborated with government officials [1] to violate their constitutional rights. According to the allegations, Ali and members of his family, including his son Sam, were the largest exporters of high-quality, late-model used vehicles to Kuwait. Plaintiffs apparently maintain that their business was intentionally destroyed by collusive action of all the defendants named in the amended complaint in violation of plaintiffs' constitutional rights. They allege that the early aspects of the allegedly collusive action resulted in a criminal indictment filed on August 13, 1997, in the Fort Worth Division of this court against a corporation through which plaintiffs and their family conducted a part of their export business and several members of the family, including Sam. The indictment charged members of the Odeh family with one or more offenses pertaining to the tampering with the odometers of vehicles that were to be exported to Kuwait, and one of the family members with the making of false statement to a bank whose deposits were insured by the FDIC with respect to exported vehicles. The indictment was dismissed as to the corporation. Each of the indicted family members pleaded guilty in the late 1990's to one or more of the offenses charged by the indictment.

By way of relief, plaintiffs seek (1) a declaratory judgment that the defendants, in deliberate and willful disregard of the limits of their lawful jurisdiction, engaged in acts outside their jurisdiction in support of a broad collusion to violate plaintiffs' constitutionally protected rights, (2) injunctive relief, and (3)

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1. Also named as defendants are two United States District Judges, a United States Magistrate Judge, the United States Attorney for the Northern District of Texas, an Assistant U.S. Attorney, the Clerk of the U.S. Court of Appeals for the 5th Circuit, an unidentified judge of the 5th Circuit, a court reporter employed by the U.S. District Court for North Texas, and other government officials.

money damages for actual losses of $149,000.000 and punitive damages of $150,000,000.

On May 2, 2006, plaintiffs filed a document titled 'Plaintiffs' Motion to Compel Production of Court Records...'.... In the course of making inquiry into the matters mentioned in the motion, and after having reviewed the allegations of the amended complaint, the undersigned has concluded that he should recuse. Bearing in mind that the preferred course is for a judge who is recusing to document the reasons for his decision, see *Hagan v. Coggins*, 77 F.Supp. 2d 776, 778 n.2 (N.D. Tex. 1999), the court is setting forth below his reasons for the recusal.

Plaintiffs alleged in their amended complaint that commencing in July 1998 Evans and Heiskell engaged in fraudulent conduct to defraud the court into thinking that Heiskell was Sam's attorney in the criminal case at Sam's initial appearance even though Evans was the one to whom Sam had paid a significant fee to represent him and who actually represented Sam at that time. Am. Compl. At 15017, pps 56-66. The district judge adversely affected by the allegedly fraudulent conduct is not identified in the amended complaint. However, the undersigned confirmed from the review he made of the court records as a part of his inquiry into the May 2 motion to compel, that plaintiffs are claiming that the conduct of Evans and Heiskell had as its goal causing the criminal case to be removed from the undersigned's docket and to be transferred to a district judge in the Dallas Division of the court.

Documents on file in the criminal case alleged with greater particularity the events to which plaintiffs refer at pages 15-17 of the amended complaint. In a document filed October 29, 2004, titled 'Motion to Return Case to the Honorable Judge McBryde's Appellate Jurisdiction', Sam, who is referred to in the quoted language as 'Petitioner', made the following allegations:

> Petitioner's counsel [Evans] lied to him in order to justify a change of venue, claiming to Petitioner that he could not

get justice in Judge McBryde's courtroom because that Judge supposedly harbored grudges against counsel Evans. In a manner unknown at this time to Petitioner, (Evans refuses to release his case file to Petitioner), his counsel secured a change of venue to Dallas, where Evans likely paid another attorney, from fees he received from Petitioner, to appear as counsel. In light of the facts that

1. The case originated in front of Judge McBryde's bench; and
2. Mr. Evans received $35,000 to represent Petitioner, just as Evans had already received $35,000 to represent Petitioner's brother, who Evans also advised to plead guilty in the same case; and
3. Evans falsely advised Petitioner, (and Petitioner relied upon that advice), that he could not get a fair trial in front of Judge McBryde; and
4. Evans appears to have kept the funds given him by Petitioner but substituted another attorney, Michael Heiskell, as attorney of record in Petitioner's case; and
5. Evans appears to have paid Heiskell from funds given him by Petitioner making Heiskell Evans' agent, (since Petitioner never paid Heiskell a dime or spent one minute preparing a defense of his case with Heiskell); and
6. Messrs. Evans and Heiskell appear to have conspired to manipulate, and succeeded in manipulating, forums securing transfer of the case to Dallas while making a false record that Petitioner himself had retained Heiskell; and
7. That Judge McBryde remains as the judge of record over the case involving the underlying convictions of Petitioner's brothers; and

8. That Judge McBryde is fit and capable of reviewing cases arising before his bench, which are assigned to magistrates but then subsequently appealed to a judge,

Petitioner moves the case be correctly re-assigned to Judge McBryde's appellate jurisdiction, from whence it lawfully arose. Such equitable result will replace the parties in exactly the same positions held before Mr. Evans' apparently self-serving actions to manipulate forums.'

Mot. To Return Case to the Hon. Judge McBryde's Appellate Jurisdiction at 1-2.

Similarly, in a document filed in the criminal case on December 7, 2004, Sam made the following allegations:

'Moreover, Petitioner carefully alleged that all the officers of the court involved in the case against him knew or should have known that he 16. Paid Mr. Tim Evans [$35,000 in cash] to represent him after his brothers were jailed and before he came home from their dealership in Kuwait to support his brothers' families; and that

17. Mr. Evans had already represented Petitioner's brother Jamal in the same criminal case, (Evans had previously received $35,000 from the family for Jamal's 'defense'; and that

18. Mr. Evans sought to conceal his receipt of dual fees from two defendants in the same criminal case by substituting counsel of Evan's selection as a virtual "front man"; and that

19. To conceal his improper acceptance of dual fees, Mr. Evans chose as his surrogate an attorney who had sued the Honorable Judge McBryde of Fort Worth and was on a list of attorneys designated by order of the Circuit as not allowed to come before McBryde's bench, thus creating colorable cause to have

> the case transferred out of the jurisdiction of Judge John McBryde to the jurisdiction of Dallas, and thus concealing Evan's improper dual involvement; and that
>
> 20. Although Mr. Evans never made an official appearance in the record of the case, he appeared as spectator in court for the hearings in the case; and that
>
> 21. In spite of the fact Mr. Tim Evans made sure not to make an official entrance into the record of Petitioner's case, it was Mr. Evans who arranged the details of Petitioner's surrender to the U.S. Marshals and Customs officers before Petitioner returned from the Middle East to the U.S.; and
>
> 22. Mr. Evans also made the arrangements for bail with the same AUSA before Petitioner arrived back in the U.S.; and that
>
> 23. Mr. Evans and his chosen surrogate filed nothing other than three boilerplate motions in Petitioner's defense, one of those motions so unprofessionally crafted as to state: "Defendant Dr. Hernan Enrique Burgos hereby moves the court...", while never raising a single objection to the prosecution or raising a single defense of Petitioner at any time; and that...'

Pet'r's Objection to Findings, Conclusions and Recommendation of Magistrate and Mot. For Evidentiary Hr'g at 6-7.

Paragraph 19 of the language quoted immediately above has reference to the order of the Judicial Council of the Fifth Judicial Circuit that is referenced in *U.S. v. Harmon*, 21 F. Supp. 2d 642, 644 (N.D. Tex. 1998). Sam appears to be correct in his allegation that the criminal case was removed from the undersigned's docket by reason of the entry by Heiskell of an appearance as Sam's attorney in the case. **Thus, if the other**

allegations made by Sam are true, the undersigned was a victim of fraudulent conduct on the part of Evans and Heiskell. The undersigned does not have knowledge that Evans and Heiskell did what Sam contends they did with fraudulent intent. However, if they did, their conduct would not be an isolated occurrence.[2]

Title 28 U.S.C. § 445(a) provides that any judge of the United States 'shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." The "impartiality" test relates to the attitude of the judge toward a party to the litigation, not the party's attorney. *U.S. v. Harmon*, 21 F. Supp. 2d at 645. Here, the allegations of plaintiffs against Evans and Heiskell might be viewed by some to raise a question as to whether the undersigned could be completely impartial in adjudicating their rights as parties to this litigation. The undersigned has no doubt that he would be completely fair and impartial in adjudicating the rights of Evans and Heiskell, but to large extent the test is one of perception rather than fact.

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2. The undersigned has received reports, and has seen evidence, of other instances when an attorney named on the list accompanying the December 31, 1997, order of the Judicial Council was used for the purpose, sometimes for the sole purpose, of causing a case to be transferred from the undersigned's docket or to be assigned to the docket of the other [Fort Worth] judge instead of the undersigned's. *U.S. v. Harmon*, 21 F. Supp. 2d 642 (N.D. Tex. 1998), is but an example of such an occurrence. In *Harmon*, Heiskell moved to be substituted as the attorney for the defendant shortly before trial and moved for recusal of the undersigned on the ground that the undersigned was obligated to recuse by reason of the Dec. 31, 1997, order of the Judicial Council. Other reported instances when recusal was sought by reason of the Judicial Council proceeding are discussed in *U.S. v. Marshall*, 77 F. Supp. 2d 764 (N.D. Tex. 1999).

Therefore, the undersigned hereby RECUSES and directs the clerk of court to make an appropriate reassignment of the above captioned case to another U.S. District Judge.
SIGNED May 8, 2006.
/s/ John McBryde
U.S. District Judge"

****

B. "Superseding Information" against Petitioner in 1998.

"The United States Attorney charges:

On or about April 30, 1996, in the Fort Worth Division of the Northern District of Texas and elsewhere, the defendant **Osama Odeh**, with knowledge of the actual commission of a felony offense against the United States, that is, that Nael Odeh did knowingly and willfully cause the odometer of a motor vehicle, that is, a Chevrolet Caprice, VIN 1G1BL53E3PR139543, to be disconnected, reset and altered, with intent to change the mileage registered by the odometer, did knowingly and intentionally conceal and fail to disclose the same to any person in authority, under the United States.

In violation of Title 18, United States Code, Section 4."
Paul E. Coggins
United States Attorney
/s/ J. Michael Worley
AUSA

****

C. Pre-Sentence Investigation Report prepared by USPO Blanca E. McCallum for the Honorable Robert B. Maloney, U.S. Dist. Judge

[The report is cited in pertinent part; complete report is available upon this Court's order]

Sentence Date: November 19, 1998

Offense: Count 1: Misprision of a felony (18 USC § 4) - 3 years/$250,000 fine, a Class E felony
The original indictment is to be dismissed at sentencing
Date Offense Concluded: April 20, 1996
Release status: Voluntary surrender on July 13, 1998 and released on a personal recognizance bond with pretrial supervision.
Detainers: None
Codefendants: See attached
Related cases: none
Date Report Prepared: August 23, 1998
Identifying data:
Date of Birth: November 11, 1959
Age: 38
Race: White, non-hispanic
Sex: Male
Social Security Number: 465-59-5993
FBI Number: 386040FA6
U.S. Marshal Number: 32176-077
TX DL Number: 08028247
TXN PACTS Number: 19945
Education: Some college
Dependents: Four
Citizenship: United States, naturalized 1986
Legal Address: 2114 Bay Cove Court, Arlington, Texas 76013
Aliases: Osama Ali Odeh (True Name)
CoDefendants:
Sports Cars Center, Inc. (01) Pending

Alam Odeh (02) cousin Pled guilty to Count 2 (49 USC §§

	32703(2) & 32709(b) & 18 USC 2
Ali Odeh (03) father	Pending
Jamal Odeh (04) brother	Pled guilty to Count 2 (49 USC §§ 32703(2) & 32709(b) & 18 USC 2
Nael Odeh (05) brother	Pled guilty to Count 2 (49 USC §§ 32703(2) & 32709(b) & 18 USC 2

Part A. The Offense

Charge and Conviction

"1. Sports Cars Center, Inc. Alam Odeh, Ali Odeh, Jamal Odeh, Nael Odeh and **Osama Odeh** were named defendants in an 11 count Indictment filed August 13, 1997 in the Northern District of Texas, Fort Worth Division. In Count 1, each defendant is charged with Conspiracy to Reset and Alter Odometers of Used Motor Vehicles, in violation of 18 USC § 371. Counts 2 through 9 charged each defendant, except Sport Cars Center, Inc, with Odometer Tampering, Aiding and Abetting in violation of 49 USC §§ 32703(2) & 32709(b) & 18 USC §2. Counts 10 and 11 charged only Nael Odeh with making False Statements on Loan Application, in violation of 18 USC §1014. On September 2, 1998, the defendant, **Osama Odeh**, was the sole defendant named in a one count Information. The Information charged the defendant with **Misprision of a Felony**, in violation of 18 USC §4.

2. **Osama Odeh** was arrested by agents of the United States Customs Service on July 13, 1998. **Odeh** was working in Kuwait at the time the Indictment was filed where he remained until the time of his arrest. According to the case agent, for approximately one week prior to **Odeh's** arrest, **Odeh's** attorney" [Mr. Timothy

Evans] "had been in touch with U.S. Customs to arrange **Odeh's** arrest. On that date, he was arrested at the Dallas-Fort Worth International Airport (DFW) by United States Customs Service.

3. On September 3, 1998, **Osama Odeh** appeared before the Honorable Robert B. Maloney, U.S. District Judge, and entered a plea of guilty to the one count superseding Information. Within the written Plea Agreement, **Osama Odeh** agreed to tender a check, payable to the United States District Clerk for the mandatory special assessment in this case, to the United States Attorney prior to sentencing. He further agreed to submit, upon demand, a financial statement under oath or submit to interviews by the United States Attorney's office regarding his capacity to satisfy fines or restitution. **Osama Odeh** agreed the Factual Resume is true and correct and is submitted to the Court as evidence. The government agreed not to further prosecute the defendant for participation in the offenses alleged in the Indictment and set out in the Factual Resume. The government agreed to move for dismissal of the original Indictment as to this defendant. Pursuant to Federal Rule of Criminal Procedure 11(e)(1)c, the government agreed to recommend that a sentence of probation is the appropriate sentence in this case. The conditions of probation will be imposed by the Court, pursuant to 18 USC § 3563. Those conditions may include a condition or combination of conditions that substitute intermittent confinement, community confinement or home detention for imprisonment, if required under the guidelines. Pursuant to Rule 11(e)(4), **Osama Odeh** will be allowed to withdraw his plea if the Court rejects this Plea Agreement. The Court deferred acceptance of the Plea Agreement and ordered the preparation of a Presentence Report. Sentencing was scheduled for November 19, 1998.

The Offense Conduct

4. The investigation of this offense was conducted by the United States Customs Service (Customs) in Jacksonville, Florida and Dallas, Texas. State and local law enforcement agencies assisted in the investigation. The information presented here is summarized from Customs' investigative reports, the Indictment and superseding Information, Factual Resumes of each convicted defendant and interviews with each convicted defendant. Additionally, the defendants have submitted various documents (originals and translations) to be considered. These will be identified individually in the discussion on loss at the end of this section.

5. On May 1, 1996, agents of the United States Customs Service and the Florida Highway Patrol in Jacksonville, Florida were examining a shipment of 66 vehicles to be exported to Saudi Arabia. The vehicles that are to be exported are normally inspected to determine if any stolen vehicles are included in the shipment to be exported out of the United States. During this investigation, one of the agents noted that the mileage indicated on the odometers did not correspond to the mileage on the titles. The odometer readings were significantly lower than the mileage on the titles.

6. After examining the odometers and vehicle documents, a total of 58 vehicles were identified as having had the odometers rolled back to a lower mileage. The exporter for these vehicles was Sports Cars Center, Inc, in Arlington, Texas. The vehicles were being shipped to Al-Kifah For Cars, in Damman, Saudi Arabia. These cars were seized by the Florida Highway Department pending forfeiture procedures.

7. The U.S. Customs Resident Agent in Charge in Dallas, Texas was contacted and an investigation was initiated into Sports Cars Center, Inc, and odometer tampering on vehicles that they were

exporting to Saudi Arabia and Kuwait. On May 8, 1996, a Customs special agent contacted the freight forwarding company utilized by Sport Cars Center, Inc. This company revealed Sport Cars Center, Inc. had been a customer for five years and exported an average of 100 vehicles per month to Saudi and Kuwait. Customs also received information from the Department of Transportation which included a check list of items to help determine if odometers had been rolled back. This was sent on to the Florida investigative team.

8. Agents established surveillance on Sport Cars Center, Inc., which revealed that approximately 70 vehicles were parked in a security lot adjacent to the main building. Many of these vehicles were already prepared for export based on the fact they had dealer stickers written in Arabic in the window of the vehicles.

9. On May 16, 1996, special agents of Customs, Internal Revenue Service, and Department of Commerce, along with Texas Department of Public Safety and Arlington, Texas Police Department, executed a federal search warrant at Sport Cars Center, Inc. Agents found 34 vehicles that had rolled back odometers and they were seized. Forty-five other vehicles were constructively seized for further investigation. Agents also seized company records, odometer roll back tools, and three replacement electronic odometers. Seized records DID NOT [emph. added] reveal altered titles, applications for duplicate titles, nor forged signatures on titles. There were NO [emph. added] purchase agreements or other documents showing any vehicles with rolled back odometers were sold to United States customers.

10. Sport Cars Center, inc., is a family owned and operated business, owned by Ali Odeh and his sons, **Osama Odeh**, Jamal Odeh and Nael Odeh. Ala Odeh is the nephew and cousin to these individuals, and was employed as the shop manager in at Sport

Cars Center, Inc. Through this business, the Odeh's primarily exported Chevrolet Caprice Classic vehicles, but also exported Suburbans, Lincon Town Cars, Ford Crown Victorias, Mercury Marquis, Cadillacs and Lexus models. Vehicles that had digital odometers had the factory unit replaced with one ordered from various sources. The supplier of the replacement odometers was instructed as to what mileage should be shown. Once the units were received , they were changed out with the factory installed odometer. This activity occurred on site at Sport Cars Center, Inc.

11. Following execution of the search warrant, agents interviewed Ali Odeh, then president of Sport Cars Center, Inc. He stated that he was fully aware of everything that occurred in the business. He stated he exported an average of 150 vehicles per month during 1996 and had averaged 100 per month over the previous three years. He stated gross business activity for the company over the previous five years had averaged $12,000,000 to $18,000,000 annually. During his interview, Ali Odeh made conflicting statements regarding his knowledge of the illegality of odometer tampering. He stated that people to whom he sells cars in Kuwait and Saudi Arabia were not concerned about the mileage on a vehicle but more about the condition of the vehicle. He had no response when asked why odometers would be rolled back if customers were not concerned about mileage. Agents also learned that during the interview that Ali Odeh is one of his own customers, in that he sells from Sport Cars Center, Inc., to his used car dealership in Kuwait. Ali Odeh further stated that his sons Jamal, Nael and **Osama,** were responsible for overseeing the shipments of vehicles to the Middle Eastern destinations.

12. Alam Odeh, the shop manager for Sport Cars Center, Inc was also interviewed. He stated he handled the repairs and upgrades that were completed on all vehicles that the company exported. During his interview, he stated he had not rolled back odometers

on vehicles that were exported and he stated he knew it was against the law to tamper with odometers. He further stated that he could not buy odometers, but could only repair them. According to agents, several statements made by Alam Odeh during his interview were contradicted by employee statements. However, Alam Odeh subsequently admitted to his activity in odometer tampering.

13. Nael Odeh, vice president of Sport Cars Center, Inc. was interviewed. He stated he did not know anything about odometer tampering and that he had not rolled back any odometer. He made no response when asked to explain how the odometers on the vehicles in Jacksonville had been changed. Nael Odeh subsequently admitted to his activity in odometer tampering.

14. Jamal Odeh was interviewed by agents and he informed agents that the methods used to roll back an odometer varied according to the type of vehicle. He stated some odometers were removed, changed and then reinstalled. Some were replaced with similar odometers with lower mileage readings, particularly electronic odometers. Jamal Odeh stated Kuwait, unlike the United States, does not have laws to prevent rolling back odometers and that numerous foreign dealers from Germany and Japan send vehicles into Kuwait with rolled back odometers. He further stated that Sport Cars Center, Inc. did not sell vehicles in the United States with rolled back odometers.

15. Employees of Sport Cars Center, Inc, were interviewed concerning their knowledge and involvement in rolling back odometers. Several employees stated they had seen Alam Odeh, Jamal Odeh and Nael Odeh roll back odometers on vehicles that were to be exported to Suadi Arabia and Kuwait. The employees indicated that the roll back of the odometers was done only be a member of the Odeh family. One employee reported he had

worked approximately four years for the company and that an average of 60 to 100 vehicles per month were exported to the Middle East. Employees further reported that all inspection stickers, oil change stickers and any other indication as to the mileage of the vehicle were removed. This included removing individual pages form the owner's manual that contained mileage notations. One employee reported that roll back activity was performed just prior to the vehicle being loaded on a transport truck for shipment to the point of export. One employee reported personal knowledge of Alam Odeh ordering digital odometers by telephone from various salvage yards, and informing the salvage yard as to what mileage to set on the odometer.

16. On July 22, 1996, a customs agent interviewed Nidal Alzuraqi who was then incarcerated at the Federal Prison Camp in El Paso, Texas. Alzuraqi had contacted customs by mail indicating his desire to provide information concerning his former employer, Sport Cars Center, Inc. and illegal activities occurring at the business. He expressed this desire with the hope of having his sentence reduced or his conviction overturned. During that interview, Alzuraqi stated Ali Odeh was the company owner and that he directed all of the activities occurring at the business. Alzuraqi reported he had been employed as the general manager of the company from 1988 to early 1992. He described the primary business of the company as being the exporting of vehicles to Saudi Arabia and Kuwait, with the vehicles having rolled back odometers. This was done for the specific purpose of selling the exported vehicles for a higher price. He stated Jamal Odeh and Nael Odeh did the actual roll back activity and that Nael and Jamal had taught another employee how to roll back odometers. He reported that the Odehs obtained vehicles at auto auctions in Texas and surrounding states, specifically looking for high mileage, late model Chevrolet Caprice Classics. These were the preferred vehicles that were exported to Saudi Arabia and Kuwait. The

Odehs preferred vehicles that had been used as fleet or rental vehicles since they had normally been serviced on a regular basis. Alzuraqi further stated that all vehicles were inspected and any needed repairs were scheduled. Theses operations were overseen by Alam Odeh, the shop manager. Various employees were assigned to remove maintenance stickers, and pages from the owner's manual. Following this, installation of new equipment and add-ons was conducted. This included optional equipment such as power windows, power locks and power seats; installation of a replacement window kit that prevented buildup of sand on the rear window, replacement of brake and gas pedals that showed excessive signs of wear; installation of vinyl roofs to cover rusted or damaged areas. He further reported that the last activity on the vehicle involved the roll back of the odometer. He stated the average roll back per vehicle was between 35,000 and 50,000 miles.

17. As charged in Count 2 of the Indictment, on or about April 20, 1996, Alam Odeh, Ali Odeh, Jamal Odeh, Nael Odeh and **Osama Odeh** reset and altered, or caused to be reset and altered, the odometer on a 1993 Chevrolet Caprice. The mileage on the odometer, approximately 68,155 miles, was changed to falsely reflect approximately 28,212 miles.

18. As contained in the one count superseding Information filed against Alam Odeh, on or about April 20, 1996 Alam Odeh had knowledge that Ali Odeh knowingly and willfully caused the odometer of a 1993 Chevrolet Caprice to be reset and altered. Alam Odeh knowingly and intentionally concealed and failed to disclose that knowledge to any person in authority under the United States.

19. In June 1996, the Odeh family discontinued operating under the name Sport Cars, Center, Inc. and began operating as The

Odeh Group, Inc. According to the government the defendants have continued to export cars to Kuwati and Saudi Arabaia during 1996 and 1997, and to the best of the government's knowledge, they have done so without rolling back odometers.

20. On October 7, 1996, Jamal Odeh and **Osama Odeh**, as part of a proffer agreement, provided relevant information regarding the odometer tampering to Customs Special Agent Scott Springer. During that meeting, the Odehs stated the reason they rolled back miles on a vehicle was because 'everyone else does it' and they could not compete if they did not do it. However, since they had discontinued the roll back activity they were still receiving the same price for the vehicles. They stated that when the shipment of vehicles in Jacksonville, Florida was seized, they became suspicious and reset all the odometers they had tampered with in the cars that were due to be shipped from Sport Cars Center, Inc. They stated that digital odometers were sent to Kansas City to be adjusted to the desired mileage and that occasionally, digital odometers were ordered from junkyards with low mileage readings. They provided the agent with additional information regarding similar activities conducted by other vehicle wholesalers who shipped vehicles from the U.S. to the Middle East. Jamal Odeh contacted the agent on December 3, 1996 to provide other information regarding individuals alleged to be involved in illegal odometer tampering."

Determination of Loss

Omitted. No mention of **Osama Odeh** in this section

Victim Impact

Omitted. No mention of **Osama Odeh** in this section

Adjustment for Obstruction of Justice

"44. There is no information to suggest the defendant has attempted to impede or obstruct the investigation or prosecution of this case."

NOTE:
Although his PreSentence Report was sealed and never provided to Movant until upon his motion to the Fifth Circuit in 2005, the full Report is available for review.